



## **Town of Moultonborough Zoning Board of Adjustment**

### **Notice of Decision**

#### **Request for Variance - Maximum Buildable Slope Bears Nest Trail, LLC / Map 64, Lot 5**

**June 20, 2013**

**Applicant:** Bears Nest Trail, LLC  
P.O. Box 50849  
Sarasota, FL 34232

**Location:** Bears Nest Trail, Moultonborough, NH (Tax Map 64, Lot 5)

On June 5, 2013, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Bears Nest Trail, LLC (hereinafter referred to as the "Applicants" and/or "Owners") for a variance from Article XIV.5.C to change the 25% maximum buildable grade requirement to 35% in the Steep Slopes Conditional Use Permit performance standards in order to allow an already-built lookout tower to proceed to the Planning Board seeking a Steep Slopes Conditional Use Permit for the structure to remain.

Based on the application, and testimony given at the hearings, the Board hereby makes the following findings of fact:

- 1) The property is located on Bears Nest Trail (Tax Map 64, Lot 5).
- 2) The applicant is the owner of record for the lot.
- 3) On May 28, 2013, Attorney Boldt requested to be placed on the ZBA agenda of June 19, 2013.
- 4) On June 5, 2013, the ZBA voted 5-0 to conduct a Site Visit at the location on June 15, 2013, and to continue the Public Hearing to June 19, 2013.
- 5) The ZBA conducted a Site Visit on June 15, 2013.
- 6) The applicant was represented at the Public Hearing by Christopher L. Boldt, Esquire. Present for the hearing were Dan Ellis, P.E.; Ames Associates and Joanne K. Coppinger, P.E.
- 7) The lot is located in Residential Agricultural (RA) Zoning District.

- 8) The existing recreational Lookout Tower was recently constructed in violation of the twenty (20) foot sideline setback and on a slope greater than twenty-five (25) percent.
- 9) The violation was discovered by the Code Enforcement Officer and the applicant was instructed to remove the structure or apply for Variances from the ZBA, Steep Slopes Conditional Use Permit from the Planning Board and apply for a building permit with required engineering reports from the Code Enforcement Officer.
- 10) The footprint of the Tower is on an approximate 35% grade.
- 11) The applicant has proposed to install water bars, and drainage structures both down slope and up slope of the Tower.
- 12) There are two areas shown that have been clear cut; one small area within the inner circle in the existing vegetation cut field will be allowed to go back to natural, but be pruned as necessary to preserve views, to no lower than three (3) foot high, while the larger area in the outside circle will be allowed to go back to natural.
- 13) The applicant must obtain two variances from the ZBA, a building permit from the CEO, and a Conditional Use Permit (CUP) from the Planning Board for the structure to remain.
- 14) Don Cahoon, (CEO) stated that there was not a permit issued at the time of construction. They have applied for one since, and at the date of the ZBA hearings, the permit application is still pending, awaiting additional engineering reports and materials.
- 15) Don Berry, representing the abutter, Lakes Region Conservation Trust (LRCT) stated he had a discussion regarding the impacts on their property and what type of restoration and modifications were proposed. He did not speak for or against the Variance request.
- 16) Granting the Variance would not be contrary to the public interest as the gain to the public would outweigh the loss to the applicant if the structure or part of the structure were to be removed and detrimental effects on the land were to be increased.
- 17) Granting the Variance is consistent with the spirit of the Ordinance as the location of the lookout tower would not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public, especially given the proposed stormwater treatment improvements and allowing the existing vegetation to grow back.
- 18) By granting the Variance, substantial justice is done because there would be no gain to the public benefit at all from a denial of the 25% requirement because with this proposal, the applicant will be meeting the requirements in the steep slope section, but the loss to the property owner would be great because of the impact of tearing the tower down and damaging the sensitive lands more.

- 19) Granting the Variance does not diminish the value of surrounding properties because there is no effect on the value of developable or developed land; it is held by a non-profit conservation trust where the land cannot be built upon.
- 20) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the 25% maximum slope building requirement because of the type of use of the lookout tower, which is not a dwelling that has the need for septic disposal, stormwater runoff and more intense use, and the fact that no dwelling will ever be constructed there that would make the slope maximum of 25% be needed to satisfy the intent of the ordinance in that steep slopes section.
- 21) On June 19, 2013, the Zoning Board of Adjustment voted by a vote of four (4) in favor (Stephens, Zewski, Bickford, Crowe) and one (1) opposed (Nolin), to close the Public Hearing and to Grant the requested variance with the following conditions;
  1. Re-vegetation shall be on 100% coverage over the disturbed area, excluding trail and structure footprint areas, to be noted on the plan.
  2. Construction of stone drip edge erosion control under the roof edges.
  3. Waiver rights to any liability against the town for utilization of town services to the Tower.
  4. Recording of the Notice of Decision in the Registry.

Additionally, they moved to direct Staff to draft a formal Notice of Decision document for review for approval and signing at the next regular meeting.

The Board of Adjustment, on July 17, 2013, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision and send to the applicant and place same in the case file by a vote of four (4) in favor (Stephens, Zewski, Bickford, Crowe), one (1) abstained (Nolin).

The decision made to Approve the variance on June 19, 2013 shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens  
Chairman, Zoning Board of Adjustment

Date 7-19-2013